

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

FRIDAY, THE 20TH JULY 2007 / 29TH ASHADHA 1929

WP(C).No. 21763 of 2007(N)

OS.502/1994 of I ADDL.SUB COURT, THRISSUR
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PETITIONER:

BINNY JOSE, S/O.IMMATTI JOSEPH,
KIZHAKKEKOTTA, THRISSUR VILLAGE AND TALUK.

BY ADV. SRIDINESH R.SHENOY

RESPONDENTS:

1. SHEEBA, W/O.RAPPAI, KALLARACKAL VEETIL,
KOTTAPPURAM, THRISSUR TALUK.

2. RAPPAI, KALLARACKAL VEETIL,
KOTTAPPURAM, THRISSUR TALUK.

3. LEENA JACOB, W/O.JACOB, VALATHELIL
HOUSE, KOTTAYAM.

4. BABU JOSE, S/O.IMMATTI JOSEPH,
KIZHAKKEKOTTA, THRISSUR VILLAGE AND TALUK

5. FINNY JOSE, S/O.IMMATTI JOSEPH,
KIZHAKKEKOTTA, THRISSUR VILLAGE & TALUK.

BY ADV. SRIJJO PAUL

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 20/07/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

W.P(C).NO.21763 OF 2007

APPENDIX

EXHIBIT P1: COPY OF PLAINT IN O.S.NO.332/98, SUB COURT, THRISSUR.

EXHIBIT P2: COPY OF IA.105/2000 IN OS.502/1994, SUB COURT, THRISSUR AND THE ORDER THEREON.

EXHIBIT P3: COPY OF IA.277/2004 IN OS.332/1988, SUB COURT, THRISSUR.

EXHIBIT P4: COPY OF I.A.5436/2006 IN IA.277/2004 IN OS.332/1988, SUB COURT, THRISSUR.

EXHIBIT P5: COPY OF IA.1951/2007 IN IA.277/2004 IN OS.332/1988, SUB COURT, THRISSUR.

EXHIBIT P6: COPY OF JUDGMENT DT.13.4.2007 IN OS.332/1988, SUB COURT, THRISSUR.

EXHIBIT P7: COPY OF ORDER DT.22.6.2007 IN IA.5436/2006 IN IA.277/2004 IN OS.332/1988, SUB COURT, THRISSUR.

/TRUE COPY/

PA TO JUDGE

M.N.KRISHNAN, J.

W.P(C).NO.21763 of 2007

Dated this the 20th day of July, 2007

JUDGMENT

Notice to respondents 3 to 5 are dispensed with as they are not necessary parties.

2. This Writ Petition is filed seeking to set aside Exhibit P7 order passed by the Subordinate Judge's Court, Thrissur in I.A.No. 5436/2006 in I.A.No. 277/2004 in O.S.No.332 of 1988. The Original Suit was dismissed for default and in order to restore the same, the plaintiffs filed I.A.No.277 of 2004 on 26.7.2006. As the plaintiffs' counsel did not appear and as the plaintiffs were absent, the petition to restore the restoration of the suit was dismissed. It is aggrieved by that decision, the present Writ petition is filed.

3. Exhibit P4 is the petition. What is stated therein is that the advocate was engaged in another court, namely, Additional District Court, Thrissur and he had entrusted his junior lady lawyer to represent him. Unfortunately, there was some omission and therefore, the court dismissed the matter for default. I am aware that the engagement of a lawyer in another court is not a proper ground for seeking an adjournment. But when an advocate is

actually engaged in another court, it may not be possible for him to reach the other court to contest the case at the same time. So, a lenient view has to be taken in these type of matters and the court shall not take it as a technical ground for dismissing the matter for default in such cases. I am satisfied, there exists sufficient ground for restoration of I.A.No.5436 of 2006. Therefore, the order under challenge is set aside and I.A.No.5436 of 2006 is allowed. On restoration, the learned Subordinate Judge is directed to dispose of I.A.No.277 of 2004 in O.S.No.332 of 1988 as expeditiously as possible, that too, within a time frame of four to six weeks from today.

The Writ Petition is disposed of as above.

M.N.KRISHNAN, JUDGE

vgs.